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6 **BEFORE THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD**  
7 **OF THE STATE OF CALIFORNIA**  
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9 In the Matter of the Applications of:

10 **R.W.; Applicant**

11 **D.J.; Applicant**  
12

**Precedent Decision No. 01 – 09**

13 A hearing on this application was held on August 9, 2001, in Oakland, California, by  
14 Donna D. Ferebee, Hearing Officer, who was assigned to hear this matter by the Executive Officer of  
15 the California Victim Compensation and Government Claims Board (Board).

16 The applicant and victim, R.W., attended the hearing. R.W.'s mother, D.J., also attended the  
17 hearing.

18 **Claim History**

19 The application, arising from a shooting occurring on February 12, 1999, was received on  
20 December 2, 1999; was recommended for denial on the April 28, 2000, consent calendar; and was  
21 timely appealed. The applications request assistance for medical and mental health counseling  
22 expenses.

23 **Summary of Issues**

24 Staff recommended the applications be denied because staff determined that R.W. was  
25 involved in the events leading to the qualifying crime due to illegal drug-related activity at the time of  
26 the crime.

27 **Findings of Fact**  
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1 According to the police report, R.W. was lying on his back and right side on the porch steps in  
2 front of a home on 77th Avenue when the police arrived on the scene. The officers observed that  
3 R.W. had been shot once in his face, twice in his back, once in his right buttock, and once in his thigh.  
4 He was immediately transported to the hospital.

5 According to the report, the officers spoke with the occupants of the house who claimed that  
6 they saw nothing, but heard a verbal confrontation just prior to hearing the gunshots. The occupants  
7 stated that they did not know the victim, but one reported to have heard someone outside say, "You  
8 better not tell nobody" in a very threatening manner. The officers took statements from several  
9 neighbors, many of whom claimed to have heard the gunshots, but all denied seeing the shooting. One  
10 neighbor in particular stated that "R.W." is a quiet person and should not have any problems with  
11 anyone. One witness, J.A., told police that he had witnessed the shooting from about five houses  
12 down the street. J.A. reported that he knows of the suspect but does not know the suspect's name.  
13 J.A. told police that he believes R.W. was shot because he was selling fake cocaine.

14 According to the report, officers met with R.W. and his mother, D.J., on March 9, 1999.  
15 During this interview, R.W. admitted to the police that he was selling drugs in front of the house at the  
16 time he was shot, but claimed that the shooting was unrelated to the drug deal.

17 The report indicates that R.W. explained to police that earlier in the day he had punched a  
18 person named "W." and about 20 minutes later, W. was in a car with two other men driving up and  
19 down the street. R.W. told police that he later learned that the other two men may have been W.'s  
20 brothers, and one was named "J." R.W. told police that "J" and one of the other brothers got out of the  
21 car. "J" approached R.W., and asked him if he hit his brother (W.). According to R.W.'s statement,  
22 "J" then pulled out a gun and shot him. R.W. stated that he tried to run, but was shot four more times  
23 as he attempted to get away. R.W. reported that the men then fled the scene.

24 According to the report, J.L. was arrested on suspicion of shooting R.W., and a statement was  
25 taken.<sup>1</sup> J.L. first gave several inconsistent versions of what had transpired before he finally admitted  
26 to shooting R.W.; but he claimed that he did so only because R.W. had a gun. When officers  
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29 <sup>1</sup> J.L. was convicted of assault with a deadly weapon and sentenced to 15 years in prison.

1 contacted R.W. about the allegation that he had a gun, R.W. maintained that the incident occurred  
2 exactly the way he had explained it previously (presumably denying that he had a gun).

3 The report contains a statement from another witness, W.D., who denied being with J.L. at the  
4 time of the shooting, but admitted that J.L. had told him that he planned to shoot R.W.. W.D. also told  
5 police that J.L. later admitted to shooting R.W., and claimed to have killed him. The report also  
6 contains a statement from another witness, M.P., who admitted that he was present when the shooting  
7 occurred, but stated that he did not actually see J.L. shoot R.W.

8 The file also contains a Crime Report Clarification Request dated February 14, 2000. On this  
9 form, the investigating officer indicated to Board staff that J.L. was charged with attempted murder.  
10 The officer also indicated that R.W. was involved in illegal activity that contributed to, or led up to the  
11 incident. The officer explained that the suspect alleged that the victim was one of several individuals  
12 who had earlier robbed his brother, but the victim denied it. The officer also indicated that the suspect  
13 claimed to have shot R.W. in retaliation for the robbery.

14 In his April 23, 2000, appeal letter to the Board, R.W. emphasized that he was never charged  
15 with any crime, and seems to argue that he was not selling fake cocaine. In his January 5, 2001, appeal  
16 letter to the Board, R.W. again emphasized that he was not charged with any crime. He stated that he  
17 did not have a weapon at the time of the shooting, and was not involved in a robbery of car speakers.<sup>2</sup>

18 At the hearing, R.W. denied any involvement in a robbery, and denied that the shooting was  
19 drug-related. R.W. testified that about 30 minutes before the shooting he had been talking with W.,  
20 was threatened by something W. said, and hit W. out of self-defense. The Hearing Officer asked R.W.  
21 what the threat was regarding, and R.W. responded that he could not remember, but then eventually  
22 stated that it had something to do with telling someone something about car speakers. The Hearing  
23 Officer asked R.W. if he knew anything about a robbery of car speakers or any other robbery, and  
24 R.W. responded that he does not know anything about it. R.W. admitted under oath to selling drugs in  
25 the past, but maintained that he had not been selling drugs in front of the house at the time he was  
26 shot.

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29 <sup>2</sup> The staff recommendation does not mention car speakers.

1 R.W.'s mother, D.J., testified that based on what she knows of her son, he was not involved in  
2 any criminal activity leading up to the crime.

### 3 **Determination of Issues**

4 The Board shall approve an application for assistance if a preponderance of the evidence shows  
5 that as a direct result of a crime the victim incurred an injury that resulted in a pecuniary loss. (Gov.  
6 Code, § 13964(a).)

7 An application may be denied, in whole or in part, if the Board finds that denial is appropriate  
8 because of the nature of the victim's involvement in the events leading to the crime. (Gov. Code, §  
9 13964(b).) The Board may consider the following factors when determining whether a victim was  
10 involved in the events leading to the qualifying crime due to illegal drug-related activity: 1) the victim  
11 was involved in an illegal drug transaction at the time the qualifying crime occurred; and 2) the victim  
12 was victimized as a result of involvement in a prior illegal drug transaction. (Cal. Code Regs., tit. 2, §  
13 656.2.)<sup>3</sup> Evidence of a victim's involvement in the events leading to the qualifying crime obtained by  
14 an investigating law enforcement agency may be given significant weight. (Reg., §§ 656.1(e);  
15 656.2(c).)

16 Factors that may be considered to mitigate involvement in the events leading to the qualifying  
17 crime include, but are not limited to: 1) the victim suffered an injury that was significantly more  
18 serious than reasonably could have been expected as a result of his involvement in the events leading  
19 to the qualifying crime; and 2) another person involved in the events leading to the qualifying crime  
20 escalated his or her conduct in a manner not reasonably foreseeable by the victim. (Reg., § 656.8.)

21 It is undisputed that R.W. suffered very serious injuries as a result of being shot multiple times.  
22 There is no question that he was the victim of a qualifying crime. However, the issue is whether or  
23 not there is sufficient evidence that R.W. was involved in the events leading to the qualifying crime  
24 due to illegal drug-related activity, such that his application should be denied.

25 Although R.W. vehemently denies selling drugs at the time of the shooting, the police report  
26 indicates that R.W. admitted to police that he was doing just that when he was shot. Considering all of  
27 the evidence, and particularly the admission of R.W. to the police that he was selling drugs, it is most  
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29 <sup>3</sup> All citations to regulations are to Title 2, California Code of Regulations.

likely that R.W. was involved in illegal drug-related activity. In addition, by R.W.'s own admission, he had punched W. approximately 30 minutes before the shooting. The explanation R.W. gave regarding that incident was vague and noticeably evasive. This affected R.W.'s overall credibility. Finally, it also appears that R.W. may have been involved in criminal activity regarding a robbery of car speakers. Aside from the incident with W. and the possible robbery of car speakers, there is sufficient evidence that R.W. was involved in some kind of illegal drug activity that precipitated the shooting. Thus, it is found that R.W. was involved in the events leading up to the crime due to illegal drug-related activity.

Having found that R.W. was involved in the events leading to the qualifying crime due to illegal drug-related activity, the question becomes whether denial of the application, either in whole or in part, is appropriate. Given the evidence of involvement due to illegal drug-related activity on the part of R.W., and applying the mitigation factors provided in Regulation § 656.8, it cannot be said that R.W. suffered an injury that was significantly more serious than he reasonably could have expected would result from his actions. Therefore, it is appropriate to deny the application in whole.

## Order

The application is denied. R.W. is not eligible for program assistance.

Date: August 29, 2001

**DONNA D. FEREBEE**  
Hearing Officer  
California Victim Compensation and  
Government Claims Board

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**Precedent Decision No. 01 - 09**

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13 On October 19, 2001, the California Victim Compensation and Government Claims Board  
14 adopted the attached Decision as a Precedent Decision in the above-referenced matter. The Decision  
15 became effective on October 19, 2001.  
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17 Date: October 30, 2001

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JANICE HILL  
19 Acting Chief Counsel  
20 California Victim Compensation and  
21 Government Claims Board  
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